



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,149	08/08/2001	Manoj Abraham	020431.0770	3112

7590 11/16/2004  
Baker Botts L.L.P.  
Suite 600  
2001 Ross Avenue  
Dallas, TX 75201-2980

EXAMINER

FISCHETTI, JOSEPH A

ART UNIT PAPER NUMBER

3627

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/925,149

Applicant(s)

MANOJ

Examiner

Joseph A. Fischetti

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) 1-16, 25 and 26 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 17-24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

***Election/Restrictions***

Claims 1-16, 25 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/4/04.

Applicant argues that the proposed inventions are not independent and distinct. To these ends the examiner offers applicant the following additional proof.

The inventions are distinct, each from the other because:

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as the medium on which the logic is written can alternatively be used as a device on which music is recorded and played. See MPEP § 806.05(d).

Inventions I and II, III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process can be practiced by human intervention manually accessing data describing the supply chain.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Regarding the fact that the invention are not independent, since it is shown that they are distinct, the compound requirement cannot be met and the issue is made moot. However it should be appreciate that this is a 705 business method application and the burdens upon the examiners in this class rise exponentially with the claims required for examination. For example, unlike the rest of the Office, in the event of allowance, separate reason s for allowance must be made for each and every independent claim allowed in 705 and reiterative analyses made for NPL references, foreign and US art. Hence, serious burden is placed upon the examiner whenever an additional statutory class of invention is imposed for examination on the examiner.

The restriction is made FINAL.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy et al. in view of Milne et al.

Kennedy et al disclose access data describing a plurality of priority levels, each priority level comprising at least one item request (read as the criteria col. 5 lines 36-66 and cols. 7-8 items 1-4. Kennedy et al. disclose a downstream planning logic which for each priority level and for each item request of a priority level as follows: Kennedy et al. in col. 7 lines 6-20 discloses planning an order for an item request of a current priority level according to a plurality of recorded unplannable network components (read as those others than those one or two in group 2, an unplannable network component being unable to satisfy an item request (read as the unplannable material availability network component). Kennedy disclose determining that those in Group 1 will be served and which in group 2 should be made late based upon "due date"; this is read as providing an order plan comprising the orders planned for the item requests at each priority level.

However, Kennedy appears to be silent regarding access data describing a supply chain network comprising a plurality of network components, each network component operable to supply one or more items to satisfy an item request. However, Milne et al disclose plural network components (all manufacturer entities) which are operable to supply one or more items to satisfy an item request, namely parts A,B,C ... . It would be obvious to modify Kennedy et al. to include the plural network components the motivation being the better understanding of manufacture problems downstream before they manifest. The steps of validating and recording the validated the unplannable network components for the current priority level is deemed an old and notorious step and official notice is hereby taken thereof lending no patentable weight to the claims. *In reply to applicant's request for evidence of the old and notorious practice of validating and then recording data, reference is made to US PATENT 6,091,362 ISSUED TO Stilp et al. on 7/18/2000 and filed 1/8/99 on col. 35 line 57-59 in which the validation step is taken before recording in a database in order to insure that the data populated in the database is valid.*

Re claims 18 and 21,23, 24: see Kennedy col. 3 line 5 for buffer usage, notwithstanding the use of a buffer is deemed as an old and notorious expedient of the art.

Re claims 19, 20, and 22: Kennedy disclose determining that those in Group 1 will be served and which in group 2 should be made late based upon "due date" is read as an operation and the failure to provide material is read as the an infeasible period and the this determination is read as one of capacity.

#### FINAL REPLY

Applicant's arguments filed 8/4/04 have been fully considered but they are not persuasive. Applicant's arguments fail to distinguish claim 17 from the Kennedy patent. All Applicant's arguments do is to restate claim language which is at best, direct and to the point and do not spell out any differences. The arguments do however make clear that Kennedy et al. involve an upstream planning and somehow there is a determination downstream of this point in time of resource allocation which makes a difference. However, this distinction fails show how the claims as presently amended recite over the combination. In Particular, Kennedy disclose:

Customer requests can consist of an end item, quantity, due date (or period), and potentially many attributes such as priority which a flow policy might want to reference in determining how to plan consumers given finite resources. For example, a flow policy might be able to build only enough producers to deliver to nine of ten consumers on time. Thus, it must decide which consumer falls late. A low priority or later due date would be good criteria for making a consumer late.

This disclosure makes it clear that the system contemplates a network component which is unplannable, e.g. unable to satisfy a request for a given priority level (e.g. HIGH / LOW see col. 4 lines 36,37) in that only 9/10 customer will have the good. Applicant's statement that the Kennedy et al. system is only an upstream type one is not quite accurate in that Kennedy et al. clearly discloses it can be implemented either upstream or down stream (see col. 3 lines 37-41):

Further, although the above discussion is generally from the perspective of propagating planning decisions "upstream", supply allocation policies can be enforced "downstream" as well.

In addition, the system can be used in an actual mode as well (see col. 4 line 38), further lending to current capabilities of the system.

Applicant seeks evidence of the Official Notice taken by the Examiner. Such evidence has duly been rendered with the patent to Stilp et al.

Finally, Applicant argues that the Milne patent "fails to make up for the deficiencies of Kennedy". However, all Milne was used for is to reference an environment e.g. a manufacturing supply chain setting in which the method of Kennedy could operate. There is clear motivation for such a combination because both patents deal with insuring or managing the probability of the availability of product to an end user.

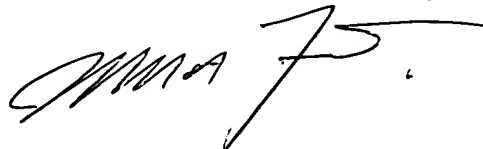
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to PRIMARY EXAMINER Joseph A. Fischetti at telephone number (703) 305-0731.

A handwritten signature in black ink, appearing to read 'J. A. Fischetti', with a stylized flourish at the end.